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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,990	04/19/2004	Bryan M. Buchi	3053.2.1	3498

7590 09/05/2006  
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EXAMINER

DEVOTI, PAUL D

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/826,990

**Applicant(s)**

BUCHI, BRYAN M.

**Examiner**

Paul Devoti

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-11 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-11 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 22 recites the phrase "...wherein the flexible polyurethane sheet includes HYS DX HT-2090F A and HYS DX HT-2090F B". These appear to be trademarks or trade names. The use of a trademark or trade name in a claim to identify or describe a material or product renders the claim indefinite. See MPEP 2173.05 (u).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

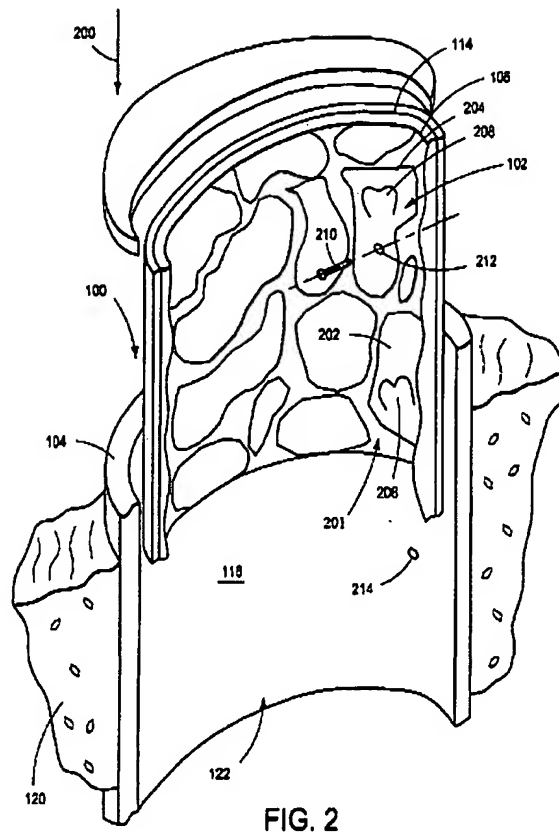
Art Unit: 3637

5. Claims 1, 2, 5-7, 9, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bryant et al. (US 2004/0035063).

6. Regarding claims 1, 7, Bryant discloses a window well shield assembly (100) including a window well (104) and a shield (102). The window well shield (102) has a first side (106) with a three dimensional pattern (108) that protrudes therefrom, and a second side (114) capable of contacting and attaching to a window well (104). The first side (106) is a moldable material, and therefore would be flexible. The second side (114) is disclosed as being made of sheet metal that is bent (paragraph 0020). The second side (114) is inherently capable of being bent or flexed, and therefore is flexible.

7. Regarding claims 2, 9, the first side (106) comprises a pattern of artificial rocks (108), having round and elliptical shapes.

8. Regarding claims 5, 6, 11, the window well shield (102) is secured to a window well (104), with screws (210) that pass through the liner (106, 114) and into the window well (104).



Bryant et al. (US 2004/0035063) Figure 2

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

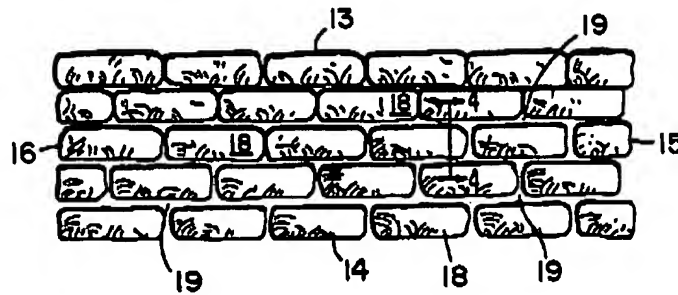
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3637

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. (US 2004/0035063) in view of Rygiel (US 6237294).

11. Regarding claim 10, Bryant discloses everything previously mentioned, but does not disclose that the pattern is a series of generally rectangular shaped rocks. Rygiel, however, discloses a decorative panel (10) with rectangular shaped bricks (18).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bryant's window well shield to include a pattern with rectangular shaped rocks as taught by Rygiel, to have a molded panel with a desired pattern.



**FIG. 3**

Rygiel (US 6237294) Figure 3

12. Claims 3, 8, 21, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. (US 2004/0035063).

13. Regarding claims 3, 8, Bryant discloses everything previously mentioned, but does not disclose the window well shield is comprised of polyurethane. It would have been obvious to one having ordinary skill in the art at the time of invention to make the window well shield of polyurethane, since it has been held to be within the general skill

Art Unit: 3637

of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Regarding claims 21, 22, Bryant discloses everything previously mentioned, including the moldable material would have paint applied to it (paragraph 0026). This would obviously include alkyd paint, as alkyd paint is common oil-based paint, which would be obvious to use to one skilled in the art.

15. Claim 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. (US 2004/0035063) in view of Groves (US 5647154).

16. Regarding claim 23, Bryant discloses everything previously mentioned, but does not disclose a layer providing ultraviolet protection. Groves, however, discloses a window well liner (10) having a coating that provides protection from the elements (column 3, lines 28-30). The "elements" would obviously include sunlight, which comprises ultraviolet rays. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bryant's window well liner assembly to include a layer that provides protection from the elements including ultraviolet rays, as this would prevent deterioration and decay of the window well liner and extend its usable life.

17. Regarding claim 24, see the rejection of claims 5, 6, 11.

18. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant et al. (US 2004/0035063) in view of Groves (US 5647154) as applied to claims 23 and 24 above, and further in view of Vance (US 2003/0110732).

19. Regarding claim 25, Bryant in view of Groves discloses everything previously mentioned, but does not disclose paint disposed over the head of the screws. Vance, however, discloses an assembly where a window frame, is secured to a wall with screws having heads that are painted (paragraph 0006). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bryant's window well liner assembly, already modified by Groves, to have the heads of the screws painted as taught by Vance, as this would provide a uniform and aesthetically pleasing look because the screw heads would blend in with the rest of the window well liner.

### ***Response to Arguments***

20. Applicant's arguments filed on June 26, 2006 have been fully considered but they are not persuasive.

21. Regarding applicant's arguments that the amendments to the claims, which included the limitation that the liner is flexible, are not disclosed by the prior art: The first side (106) of Bryant's window well liner assembly is a moldable material, and therefore would be flexible. The second side (114) of the assembly is disclosed as being made of sheet metal that is bent (paragraph 0020). The second side (114) is inherently capable of being bent or flexed, and therefore is flexible.



***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD *PD*  
08/29/06

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

A handwritten signature in black ink, appearing to read 'Lanna Mai', with a long horizontal flourish extending to the right.